IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

WP(C).No. 2593 of 2007(H)

PETITIONER:

A.R. PREMKUMAR, S/O.K.APPUKUTTAN,
AGED 44, CIRCLE INSPECTOR OF POLICE, MEMOM,
RESIDING AT "SINDHOORAM", CHITTOOR,
PAPPANAMCODE P.O., TRIVANDRUM-18.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, HOME DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM.

2. THE DEPARTMENTAL PROMOTION COMMITTEE
(LOWER), REPRESENTED BY ITS CONVENOR,
GOVT.SECRETARIAT, TRIVANDRUM.

3. THE DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS, TRIVANDRUM.

4. THE DEPARTMENTAL PROMOTION COMMITTEE(HR)
REPRESENTED BY ITS CONVENOR, GOVT.SECRETARIAT,
TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.P.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 2593 of 2007(H)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF ORDER K.D.O.NO.163/97 DTD.1.4.1997 ISSUED BY THE DISTRICT SUPERINTENDENT OF POLICE.

EXT.P2: COPY OF ORDER G.O.(Rt).NO.1200/05 DTD 24.5.06 ISSUED BY THE GOVERNMENT.

EXT.P3: COPY OF ORDER IN K.D.O.NO.30/97 DTD. 16.1.97 ISSUED BY THE DISTRICT SUPERINTENDENT OF POLICE.

EXT.P4: COPY OF ORDER G.O.(Rt).NO.1304/06 DTD. 07.06.06 ISSUED BY THE GOVERNMENT.

EXT.P5: COPY OF ORDER NO.A2(B)50/APPEAL/03 ER DTD.23.7.03 ISSUED BY THE DIG OF POLICE.

EXT.P6: COPY OF ORDER G.O.(Rt).NO.678/06/HOME DTD.17.3.06 ISSUED BY THE GOVERNMENT.

EXT.P7: COPY OF ORDER NO.K.D.O.NO.77/01 DTD. 7.12.2001 ISSUED BY THE DISTRICT SUPERINTENDENT OF POLICE.

EXT.P8: COPY OF ORDER NO.A2/60/APC/02 DTD 19.12.02 ISSUED BY THE DIG OF POLICE.

EXT.P9: COPY OF ORDER NO.G.O.(Rt).NO.1735/04/HOME DTD. 03.08.04 ISSUED BY THE GOVERNMENT.

EXT.P10: COPY OF RELEVANT PORTION OF ORDER IN I.A.NO.7227/04 DTD 21.6.04 ISSUED BY THE HON'BLE COURT TO THE GOVERNMENT.

EXT.P11: COPY OF ORDER NO.D.G.O.NO.603/04 DTD. 24.6.04.

EXT.P12: COPY OF ORDER NO.G.O.(Rt).NO.2750/05/HOME DTD.04.11.05 ISSUED BY THE GOVERNMENT.

EXT.P13: COPY OF ORDER NO.657/CAMP/05 ER DTD. 12.4.06.

EXT.P14: COPY OF ORDER K.D.O.NO.250/03 DTD 19.04.03.

EXT.P15: COPY OF REPRESENTATION DTD. 20.7.2006 SUBMITTED BY TH PETITIONER.

EXT.P16: COPY OF LETTER DTD. 15.01.07 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P17: COPY OF JUDGMENT DTD. 09.08.2000 IN W.A.NO.240/2000.

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// TRUE COPY //

K.BALAKRISHNAN NAIR, J.

W.P.(C) No.2593 of 2007 H

Dated this the 6th day of July, 2007.

JUDGMENT

The petitioner if a Circle Inspector of Police. He was promoted to that post pursuant to his inclusion in the list of eligible Sub Inspectors for the year 2003. In fact, his turn arose in 2001. At the relevant time, he was facing disciplinary proceedings, which ended in imposing a punishment of increment bar for six months. On appeal, the said punishment was converted into one of 'censure' by Ext.P9 dated 3.8.2004. At that time, the petitioner was involved in certain cases and in some of them he was exonerated and in the remaining, the punishment was converted into 'censure', it is submitted. In view of the said development, the petitioner moved for review of the supersession in the matter of promotion in 2001 made by reason of the pendency of the disciplinary proceedings. Ext.P15 is the representation filed by him in this regard. The said representation was rejected by Ext.P16. This

writ petition is filed challenging Ext.P16 on the ground that the same runs counter to the principles laid down by this court in Ext.P17 judgment. So, the petitioner seeks to quash Ext.P16 and also claims promotion to the post of Circle Inspector with retrospective effect from 2001.

2. The first respondent has filed a counter affidavit resisting the prayers in the writ petition and supporting the impugned order.

3. Heard learned counsel on both sides.

4. Normally, if the turn of an officer, who is facing disciplinary proceedings, arises his case will be considered and kept aside in a sealed cover. But the usual practice is 'not to consider the officer for promotion'. The same was done in the case of the petitioner also. But, once the delinquent is exonerated or the punishment is converted to censure, the bar in promoting him disappears and his claim is liable to be considered on merits in comparison with the officers promoted,

superseding him. In other words, he cannot get automatic promotion with retrospective effect, or the competent authority can decline to consider his claim, after the reduction of the punishment. As rightly claimed by the petitioner, the decision of this court in Ext.P17 lays down the principle to be followed. The validity of the impugned order has to be examined in the light of the decision in **Balachandran v. State of Kerala {2007 (2) KLT 316}.** The relevant portion of the said decision reads as follows:

> ***"Even assuming that the charge framed against the petitioner is for the imposition of a major penalty, that by itself cannot be a legally sustainable ground not to assess the fitness of the petitioner for inclusion in Ext.P2 select list. No officer shall be excluded from consideration merely on the ground of the pendency of disciplinary proceedings. That this is the statutory position is discernible from Note (i) of R.28(b)(i)(7) of K.S. & S.S.R. The legal requirement is to examine the records referred to in the above rule for the specific period with a view to assess the performance of the officer and to make a decision regarding his fitness to be included in the select list. The rule does not permit the Departmental Promotion Committee to simply discard the right of an officer, who comes within the field of choice, to***

> ***get his fitness for inclusion in the list assessed by the Departmental Promotion Committee which is bound to take appropriate decision about his fitness to be selected for the post for the relevant period. The rule says that the suitability of the officer for promotion should be assessed by the Departmental Promotion Committee and a finding reached, had the officer been not suspended or the criminal proceedings/departmental proceedings had not been pending against him, he would have been recommended/selected for promotion. The rule further says that where a select list is prepared the Departmental Promotion Committee shall also make a finding as to what the position of the officer in that list would have been but for the suspension or the criminal proceedings/departmental proceedings are taken after the charges have, prima facie, been established in a preliminary enquiry should not be included in the Select List. But, the case of such officers should also be assessed. It is therefore evident that the Departmental Promotion Committee was not justified in postponing the consideration of the case of the petitioner to assess his fitness to be included in the select list .....”***

A reading of the impugned order will show that it was decided not to consider the petitioner's case by reason of conversion of the punishment of increment bar to censure. The correct procedure should have been to consider his case and assess his relative merit with reference to his juniors who were promoted superseding

him. But, if his merit is not more less equal to those who were promoted, he can be superseded for that reason.

5. In view of the above position, Ext.P16 is quashed. The claim of the petitioner for promotion with retrospective effect made in Ext.P15 shall be reconsidered by the review Departmental Promotion Committee in accordance with the principles laid down in Ext.P17 judgment, within two months from the date of production of a copy of this judgment. Needless to say, in case the petitioner is found eligible for retrospective promotion, orders shall be passed in accordance with law, granting him consequential benefits.

Writ petition is disposed of as above.

Sd/-

(K.BALAKRISHNAN NAIR)
JUDGE

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